

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

IN RE:)	
)	
CIRCUIT CITY STORES, INC., et al.,)	Case No. 08-35653-KRH
)	Jointly Administered
)	
Debtors.)	Chapter 11

**RESPONSE AND REQUEST FOR HEARING OF CORMARK, INC. TO DEBTORS'
TENTH OMNIBUS OBJECTION TO CERTAIN DUPLICATE CLAIMS
(Claim Number 7026)**

Cormark, Inc. ("Cormark"), by and through its undersigned counsel, hereby responds to the Debtors' Tenth Omnibus Objection to Certain Duplicate Claims (the "Omnibus Objection") (Docket #3513) and requests a hearing with respect to the same, stating as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (B).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Factual Background

3. Cormark is in the business of designing, producing, and distributing point-of-purchase displays, merchandise displays, retail signage, and store fixtures.

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Richmond, Virginia 23219
Telephone: (804) 644-1400
Counsel for Cormark, Inc.

4. On or about June 23, 2008, Circuit City Stores, Inc. ("Stores") signed a Quote prepared by Cormark for production and delivery of 559 store displays for Circuit City's MP3-player inventory, at an estimated price of \$2,042,103.50 (the "Quote"). Copies of the Quote are attached to each of the Claims.

5. On or about June 25, 2008, Circuit City Purchasing Company, LLC ("Purchasing") issued multiple Purchase Orders to Cormark for the store displays referenced in the Quote (the "Purchase Orders"). A copy of one of the Purchase Orders is attached to each of the Claims. Copies of the other Purchase Orders, which are substantially identical to the one attached to the Claims, are not attached to the Claims or filed with this Response because together they are voluminous, but they will be produced and provided as needed.

6. Prior to the Petition Date (as defined below), (a) Cormark produced and shipped all the store displays referenced in the Purchase Orders in conformity with the directions provided in the Purchase Orders, and (b) Cormark sent its invoices for the displays to the address listed on the Purchase Orders, and Purchasing made payments to Cormark totaling \$1,134,600.36 (the "Payments"). Copies of some of Cormark's invoices, as well as copies of some of the packlists and bills of lading evidencing the shipments, are attached to each of the Claims. Copies of all the invoices, packlists, and bills of lading are not attached to the Claims because together they are voluminous, but they will be produced and provided as needed. Copies of the checks with which Purchasing made the Payments are attached as **Exhibit A**.

7. On November 10, 2008 (the "Petition Date"), the Debtors filed their respective bankruptcy cases in this Court. The Debtors subsequently filed their respective bankruptcy Schedules and Statements of Financial Affairs.

8. Purchasing noted the Payments in its Statement of Financial Affairs, but Stores did not. A copy of the page of Purchasing's Statement of Financial Affairs noting the Payments is attached as **Exhibit B**.

9. Further, Purchasing listed Cormark as an unsecured creditor, with a claim in the amount of \$806,968.24, in its bankruptcy Schedule F, but Stores did not. A copy of the page of Purchasing's Schedule F that includes Cormark is attached as **Exhibit C**.

10. Cormark timely filed identical proofs of claim against both Purchasing and Stores in the amount of \$890,713.06, which is the actual amount of Cormark's claim.

11. The claim Cormark filed against Purchasing has been assigned Claim Number 7026, and the claim Cormark filed against Stores has been assigned Claim Number 7278. Claim Numbers 7026 and 7278 shall hereinafter be referred to together as the "Claims."

12. In relevant part, the Debtors assert in the Omnibus Objection that Claim Number 7026 should be disallowed because it is a duplicate of Claim Number 7278.

Relief Requested

13. Cormark requests that the Omnibus Objection be denied with respect to the proposed disallowance of Claim Number 7026.

14. Neither of the Claims should be disallowed because both Stores and Purchasing are liable for the amounts owed to Cormark. Stores signed the Quote, in which it agreed to pay Cormark on "net 30 [day]" terms, and Purchasing issued the Purchase Orders, in which it also agreed to pay Cormark on "NET 30 [day]" terms.

15. The Debtors' implicit assertion in the Omnibus Objection that only Stores is liable to Cormark is incorrect. The submission of a purchase order is an offer. See, e.g., J.B. Moore Electrical Contractor, Inc. v. Westinghouse Electric Supply Company, 221 Va. 745, 750 (1981)

(“As a general rule, the submission of a purchase order by a prospective buyer is viewed as an offer which then may be accepted or rejected by a seller.”). Accordingly, when Purchasing submitted its Purchase Orders to Cormark, it made an offer to Cormark. Cormark accepted that offer by supplying the goods requested, and Purchasing then made the Payments. Indeed, Purchasing acknowledges its indebtedness to Cormark in its Schedule F.

16. The Debtors do not have any valid causes of action to avoid and recover the Payments. Nonetheless, insofar as it is clear that Cormark has a valid claim against Purchasing, Cormark surmises that the Omnibus Objection may be a bid by the Debtors to strip Cormark of, without limitation, defenses that may be available to Cormark in the event the Debtors file an action to avoid and recover the Payments (e.g., the subsequent new value defense).

17. Assuming that the Debtors wish to argue that the transaction with Cormark should be viewed as unitary transaction with only one of the Debtors and that Cormark’s claim should be deemed to be against only that one particular Debtor entity, then the Payments should also be deemed for all purposes to have been made by that same Debtor entity. The Debtors should not be allowed to separate Cormark’s unsecured claim, on the one hand, from the Payments, on the other hand.

WHEREFORE, Cormark requests a hearing on the Omnibus Objection and this Response, the entry of an Order denying the Debtors’ Omnibus Objection with respect to Cormark’s Claim Number 7026, and such other and further relief as to the Court is proper.

CORMARK, INC.

By: /s/ Neil E. McCullagh
Counsel

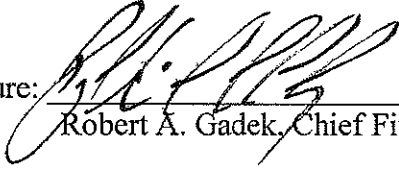
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Telephone: (804) 644-1400
Facsimile: (804) 225-8706
Counsel for Cormark, Inc.

Declaration of Robert A. Gadek, CFO

Mr. Robert A. Gadek states as follows:

I am the Chief Financial Officer of Cormark Inc. With respect to each of the factual allegations contained in paragraphs 3, 4, 5, and 6 of the foregoing Response, I have personal knowledge of such facts and/or I maintain custody and control of Cormark's records relating to those facts in the ordinary course of my employment and have reviewed and become familiar with those records. Each of those allegations is true and correct to the best of my knowledge, information, and belief, and I would testify to the same under oath if called to do so.

Date: JUNE 25, 2009

Signature: 

Robert A. Gadek, Chief Financial Officer

Subscribed and sworn to before me this _____ day of June, 2009.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2009, a true and correct copy of the foregoing Response was served by hand or by Federal Express overnight delivery (as indicated below) on the following:

McGuireWoods LLP (By Hand)

Attn: Dion W. Hayes

Attn: Douglas M. Foley

One James Center

901 E. Cary Street

Richmond, VA 23219

Skadden, Arps, Slate, Meagher & Flom, LLP (By Fed Ex)

Attn: Gregg M. Galardi

Attn: Ian S. Fredericks

One Rodney Square

P.O. Box 636

Wilmington, DE 19899-0636

Skadden, Arps, Slate, Meagher & Flom, LLP (By Fed Ex)

Attn: Chris L. Dickerson

333 West Wacker Drive

Chicago, IL 60606

/s/ Neil E. McCullagh

CHECK NUMBER: 0000027787 VENDOR NUMBER: 0002717982 CHECK TOTALS: ***\$37,900.00 37,900.00

**CIRCUIT
CITY®**

Circuit City Purchasing Company LLC
 8950 Mayland Drive
 Richmond, VA 23230
 (804) 418-8148

VENDOR NUMBER: 0002717982

Wachovia Bank, N.A.
 Virginia

68-7270
 2560

CHECK NUMBER

0000027787

PAY Thirty seven thousand nine hundred and 00/100 Dollars

PAY EXACTLY

***\$37,900.00

TO THE CORMARK INC
 ORDER 1701 S WINTHROP DR
 OF DES PLAINES, IL 60018

DATE: 09/18/08

VOID IF OVER 90 DAYS

VOID IF OVER \$200,000.00

⑈000027787⑈ ⑆256072701⑆ 2079900470992⑈

EXHIBIT

tabbles

A

09/05/08

Case 08-35653-KRH Doc 3800 Filed 06/26/09 Entered 06/26/09 12:30:23 Desc Main Document Page 8 of 13

CHECK NUMBER: 0000028115 VENDOR NUMBER: 0002717982 CHECK TOTALS: ***\$73,028.80 3,028.80

**CIRCUIT
CITY**

Circuit City Purchasing Company LLC
8950 Mayland Drive
Richmond, VA 23233
(804) 418-8148

Wachovia Bank, N.A.
Virginia

68-7270-
2560

CHECK NUMBER
0000028115

PAY Seventy-three thousand twenty-eight and 80/100 Dollars

PAY EXACTLY

***\$73,028.80

TO THE ORDER OF CORMARK INC
1701 S WINTHROP DR
DES PLAINES, IL 60018


DATE 10/02/08

VOID IF OVER 90 DAYS

P. Dunn
VOID IF OVER \$200,000.00

⑈000028115⑈ ⑆256072701⑆ 2079900470992⑈

08/08	Case 08-35653-KRH	Doc 3800	Filed 06/26/09	Entered 06/26/09 12:30:23	Desc Main
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09/08	33076	83,983.12	04997449		
CHECK NUMBER: 0000028232 VENDOR NUMBER: 0002717982 CHECK TOTALS: **\$157,011.92					
					7,011.92



Circuit City Purchasing Company LLC
 9950 Mayland Drive
 Richmond, VA 23233
 (804) 418-8148
 VENDOR NUMBER: 0002717982

Wachovia Bank, N.A.
 Virginia
 68-7270
 2560

CHECK NUMBER: 0000028232

PAY One hundred fifty seven thousand eleven and 92/100 Dollars

PAY EXACTLY **\$157,011.92

VOID IF OVER 90 DAYS

TO THE ORDER OF CORMARK INC 1701 S WINTHROP DR DES PLAINES, IL 60018

DATE 10/07/08

P. Dunn

VOID IF OVER \$200,000.00

⑈000028232⑈ ⑆256072701⑆ 2079900470992⑈

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9/11/08	33157	58,423.04	04997452	
9/11/08	33158	14,605.76	04997453	
9/12/08	33202	25,560.08	04997454	
9/12/08	33203	73,028.80	04997455	
9/12/08	33204	43,817.28	04997456	
9/12/08	33205	10,954.32	04997457	
CHECK NUMBER: 0000028320 VENDOR NUMBER: 0002717982 CHECK TOTALS: **\$299,418.08				99,418.08

CIRCUIT CITY		Circuit City Purchasing Company LLC 9950 Mayland Drive Richmond, VA 23233 (804) 418-8148	Wachovia Bank, N.A. Virginia	68-7270 2560	CHECK NUMBER: 0000028320
PAY		Two hundred ninety nine thousand four hundred sixteen and 08/100 Dollars		PAY TO THE ORDER OF	
TO THE ORDER OF		CORMARK INC 1701 S WINTHROP DR DES PLAINES, IL 60018		DATE: 10/09/08	
				VOID IF OVER 90 DAYS	

⑈000028320⑈ ⑆256072701⑆ 2079900470992⑈

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15/08 ✓	33260	29,211.52	04997458	09/18/08	33408	83,883.12	05007768	05007769
15/08 ✓	33261	47,468.72	04997459	09/18/08	33409	29,520.04	05007838	05007838
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15/08 ✓	33263	40,405.80	04997461					
16/08 ✓	33305	32,862.96	05007829					
16/08 ✓	33306	51,120.16	05007831					
16/08 ✓	33307	77,400.12	05007839					
17/08 ✓	33351	40,165.84	05007828					
17/08 ✓	33352	21,908.64	05007825					
17/08 ✓	33353	25,560.08	05007834					
18/08 ✓	33405	3,651.44	05007827					
18/08 ✓	33406	32,862.96	05007826					
18/08 ✓	33407	7,302.88	05007768					

CHECK NUMBER: 0000028545 VENDOR NUMBER: 0002717982 CHECK TOTALS: **\$567,241.56 67,241.56

CIRCUIT CITY
 Circuit City Purchasing Company LLC
 9950 Mayland Drive
 Richmond, VA 23293
 (804) 418-8148
 VENDOR NUMBER: 0002717982

Wachovia Bank, N.A.
 Virginia

CHECK NUMBER
 0000028545

PAY Five hundred sixty seven thousand two hundred forty one and 56/100 Dollars

PAY EXACTLY
 ***\$567,241.56

VOID IF OVER 90 DAYS

TO THE ORDER OF CORMARK INC
 1701 S WINTHROP DR
 DES PLAINES, IL 60018

DATE 10/28/08

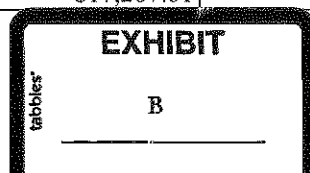
[Signature]

⑈000028545⑈ ⑆256072701⑆ 2079900470992⑈

In re: Circuit City Purchasing Company, LLC
Case No. 08-35657

Exhibit 3B. - Payments to Creditors within 90 Days (aggregating more than \$5,475)

NAME OF CREDITOR	AMOUNT PAID	NUMBER OF TRANSACTIONS
COOPER & COMPANY	\$8,975.96	1
CORMARK INC	\$1,134,600.36	5
CORPORATE EXPRESS	\$3,637,136.19	53
CORPORATE EXPRESS IMAGING	\$425,042.60	23
DAN MARINO ENTERPRISES	\$200,000.00	1
DC POWER SOLUTIONS	\$473,496.00	1
DIGITAL ON DEMAND	\$5,680.00	2
ENTERTAINMENT WEEKLY	\$150,000.02	2
EON COMMUNICATIONS CORP	\$218,982.97	12
ERNIES SHOPPING CART SPECIAL	\$16,662.00	7
FABCO METAL PRODUCTS LP	\$193,688.31	6
FASTENERS FOR RETAIL INC	\$106,761.08	12
FASTIMAGE	\$20,810.99	10
FIRST DATA MERCHANT SERVICES	\$21,954.22	1
FLEISHMAN HILLARD INC	\$20,387.84	1
FLORIDA DEPT OF REVENUE	\$147,647.08	3
FORSYTHE SOLUTIONS GROUP INC	\$103,558.79	6
FRONT ROW EVENT & PRODUCTION	\$10,075.25	2
FUEL CREATIVE INC	\$48,671.30	2
FUJITSU COMPUTER SYSTEMS CORP	\$555,536.15	14
FULL CIRCLE MARKETING	\$27,000.00	1
GEORGIA DEPT OF REVENUE	\$110,071.48	3
GPS SOURCE INC	\$6,976.00	6
GRAINGER	\$73,235.88	22
GRAPHIC COMMUNICATIONS	\$178,222.16	2
GREEN BAY PACKAGING INC	\$24,350.46	5
HAWAII DEPT OF TAXATION	\$16,290.83	3
HEWLETT PACKARD	\$62,043.41	3
HILL PHOENIX	\$519,983.41	12
HJC	\$269,292.48	14
HOLIDAY FOLIAGE INC	\$124,267.50	2
ILLINOIS DEPT OF REVENUE	\$68,044.00	3
IN YOUR EAR MUSIC & RECORDING	\$13,759.62	4
INDIANA DEPT OF REVENUE	\$7,772.53	3
INDUSTRIAPLEX INC	\$88,672.85	16
INNERWORKINGS LLC	\$2,418,790.03	17
INTEGRATED LABEL CORPORATION	\$28,574.83	21
J WILBUR CO	\$46,277.53	6
J&F MFG INC	\$488,663.38	14
J&J INDUSTRIES INC	\$110,044.00	6
JAHABOW INDUSTRIES INC	\$74,287.91	9
JLG INDUSTRIES INC	\$265,651.38	7
JNWK	\$20,000.00	1
JP ASSOCIATES	\$108,707.00	7
JPMORGAN CHASE	\$17,267.61	1



SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	DATE CLAIM WAS INCURRED, NATURE OF LIEN AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO	CONTINGENT, UNLIQUIDATED, DISPUTED	AMOUNT OF CLAIM
1182456 - 10169631 CLICKIT INC 185 CENTRAL AVE BETHPAGE NY 11714	EXPENSE PAYABLE		\$242,620.66
1114286 - 10171508 COLUMBUS PRODUCTIONS INC 4580 CARGO DR COLUMBUS GA 31907-1958	EXPENSE PAYABLE		\$143,420.91
1151938 - 10170289 CONTROL 4 CORPORATION DEPT CH 17556 PALATINE IL 60055-7556	EXPENSE PAYABLE		\$9,539.68
1146174 - 10169579 COOPER & COMPANY 21564 OLD DOMINION RD BRISTOL VA 24202	EXPENSE PAYABLE		\$14,962.00
1198557 - 10170290 CORMARK INC 1701 S WINTHROP DR DES PLAINES IL 60018	EXPENSE PAYABLE		\$806,968.24
1213411 - 10171542 CORPORATE CLEANING OF GA 5050 ASHLEY PL ACWORTH GA 30102	EXPENSE PAYABLE		\$3,670.00
1163913 - 10169953 CORPORATE EXPRESS PO BOX 71217 CHICAGO IL 60694-1217	EXPENSE PAYABLE		\$41,223.36
1100702 - 10170224 CORPORATE EXPRESS PO BOX 71217 CHICAGO IL 60694-1217	EXPENSE PAYABLE		\$248,054.26

EXHIBIT

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